

On May 17, 1996 appellant, then a 43-year-old tax examiner, filed a traumatic injury claim alleging that, on April 19, 1996, while in the course of her federal employment, she twisted

her left ankle. Appellant's claim was accepted for instability in the left ankle, and surgery was approved.

By decision dated September 1, 2000, the Office determined that appellant no longer suffered from continuing disabling residuals causing wage loss, and terminated wage-loss compensation effective September 10, 2000. The Office noted that appellant remained entitled to medical treatment for the accepted condition.

In decisions dated January 4 and August 20, 2001, the Office denied modification of its decision on termination, as it found that the weight of the medical evidence established that the work-related disability had ceased. Appellant's request for an oral hearing dated February 20, 2002 was denied by decision dated June 11, 2002.

By letter dated July 18, 2001, but received by the Office on July 22, 2002, appellant again requested reconsideration. In support thereof, appellant submitted evidence which had been previously submitted. She also submitted a report dated September 10, 2001 by Dr. Larry S. Winsberg, wherein he indicated:

"Pursuant to the nerve conduction studies administered by Dr. Leslie Kelman, the patient has an abnormal nerve conduction study involving the left peroneal and left tibial nerves. This patient has a significant slowing of conduction to the left tarsal tunnel with marked amplitude reduction as well. EMG [electromyography] study shows chronic lower motor neuron dysfunction in the ADQ and AH muscles of the left foot without active denervation. Her symptoms are consistent with left tarsal tunnel syndrome as well as dysfunction of the distal left peroneal and left tibial nerves. The sural nerve appears to be electrically normal.

"The nerve conduction studies do demonstrate that she has had some nerve damage most likely resulting from the multiple surgeries that were performed in an attempt to stabilize her rear foot."

Appellant also submitted a June 19, 2002 radiology report by Dr. Thomas W. Hinz, a Board-certified radiologist, which was interpreted a showing:

"Extensive hypertrophic changes in the base of the calcaneus as well as abnormality of the calcaneotalar joint. The etiology of this is uncertain. Old trauma is possible although some arthritis can have a similar appearance."

By decision dated July 24, 2002, the Office denied appellant's request for reconsideration without merit review.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.²

The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

“(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).³ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.⁵

ANALYSIS

The Office terminated appellant's compensation benefits effective September 10, 2000 for the reason that the work-related disability had ceased. Reconsideration was previously denied two times. With her current request for reconsideration, appellant submitted numerous medical reports which had previously been reviewed by the Office. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.608(a) (1999).

⁴ 20 C.F.R. § 10.606(b)(1)(2).

⁵ 20 C.F.R. § 10.608(b).

⁶ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

The new medical evidence of record included a report by Dr. Winsberg regarding a nerve conduction study which he states indicated nerve damage and a radiology report by Dr. Hinz showing extensive hypertrophic changes in the base of the calcaneus and abnormality of the calcanotalar joint. Neither of these reports address the issue of whether appellant has any continuing disability as a result of the accepted April 19, 1996 injury.

Appellant has failed to show that the Office erred in interpreting the law and regulations governing her entitlement to compensation under the Act, nor has she advanced any relevant legal argument not previously considered by the Office. Inasmuch as appellant failed to meet any of the three requirements for reopening her claim for merit review, the Office properly denied her reconsideration request on July 24, 2002.

CONCLUSION

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review on July 24, 2002.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member